

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Rulemaking 01-09-001
(Filed September 6, 2001)

Order Instituting Investigation on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Investigation 01-09-002
(Filed September 6, 2001)

**ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE'S RULING INVITING COMMENTS
REGARDING THE SCOPE AND SCHEDULE OF PHASES 3A AND 3B**

The current scope of Phases 3A and 3B is set forth in Appendix A. This ruling provides parties with an opportunity to submit comments regarding whether and how the scope of Phases 3A and 3B should be revised in light of technological, regulatory, and market changes that have occurred since the scope of Phases 3A and 3B was initially established. For example, parties may wish to comment on whether the scope of Phase 3B should be revised in light of the increasing prominence of VoIP. In addition, parties are invited to comment on Verizon California Inc.'s (Verizon) proposal to consolidate Phase 3A with 3B so that only a single decision results from the remainder of this proceeding.¹ Parties may also submit proposed schedules for the remainder of this proceeding.

¹ See Response of Verizon to ORA's Request for a Schedule for the Filing of Testimony in Phase 3 of the New Regulatory Framework Proceeding, dated October 14, 2003, pp. 1 – 3.

Opening comments are due on November 1, and reply comments on November 10. After reviewing the comments, the assigned Commissioner will issue a timely ruling regarding the scope and schedule for Phase 3.²

Therefore, **IT IS RULED** that:

1. Parties may submit comments regarding (i) whether and how the scope of Phases 3A and 3B should be revised in light of the technological, regulatory, and market changes that have occurred since the scope of these Phases was initially established; (ii) whether Phases 3A and 3B should be consolidated; and (iii) the schedule for the remainder of this proceeding.

2. Opening comments shall be filed and served on November 1, 2004.

Reply Comments shall be filed and served on November 10, 2004.

3. Any party submitting comments shall email an electronic copy of their comments to the assigned Administrative Law Judge (tim@cpuc.ca.gov) and to the Assigned Commissioner's Telecommunications Advisor (tjs@cpuc.ca.gov). The electronic copy shall be in Microsoft Word.

Dated October 15, 2004, at San Francisco, California.

/s/ SUSAN P. KENNEDY
Susan P. Kennedy
Assigned Commissioner

/s/ TIMOTHY KENNEY
Timothy Kenney
Administrative Law Judge

² The Commission's Order instituting this proceeding states that the "exact scope of this proceeding will be determined in one or more scooping rulings issued by the assigned Commissioner." (R.01-09-001/I.01-09-002, Ordering Paragraph 3.)

Appendix A

Current Scope of Phases 3A and 3B

Phase 3A Issues		
	Issue	Reference
1.	<p>Timing of Price Cap Advice Letter: Whether SBC and Verizon should file their annual price cap A/Ls on September 1st instead of October 1st as is currently the case. The purpose of filing the A/Ls one month earlier would be to provide Commission staff with adequate time to process the A/Ls prior to the implementation of new rates on January 1st of the following year.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, p. A-8.
2.	<p>Criteria and Procedures for Revising Prices: What criteria and procedures (other than those resolved in R.98-07-038) should be used to revise (1) prices for services in Categories 1, 2 and 3; and (2) price floors and ceilings for Category 2 services. Topics that are within the scope of this proceeding include the criteria and procedures (other than those resolved in R.98-07-038) that should be used to set and revise prices for (1) promotional offerings, (2) bundled offerings, and (3) customer-specific contracts. Parties should address whether the current criteria and procedures are adequate, or need to be refined or replaced. Parties are encouraged to address whether and how parties besides SBC and Verizon may propose price changes. Issues that are beyond the scope of this proceeding include the following: (1) changes to the existing definitions of Categories 1, 2, and 3; (2) changes to the existing categorization of services; (3) changes to existing prices, price caps, and price floors; and (4) changes to Commission review procedures resolved in R.98-07-038.</p> <p>In connection with the foregoing issues, parties are invited to address the following questions:</p> <p>(a) What criteria, rules, and procedures should apply to requests to change Cat. 2 ceilings and actual prices? Who should be permitted to make such requests? Should service-specific price changes be made revenue neutral? If so, how should this be accomplished? If there are instances where revenue neutrality should be required, are there instances where</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-8 and A-9, as further explained in the ACRs issued on 12/27/01 and the 9/23/02.

Phase 3A Issues	
	<p>revenue neutrality should not be required?</p> <p>(b) Should the current rules and procedures for adjusting price floors be changed? If so, how?</p> <p>(c) What criteria, rules and procedures should apply to requests to change Cat. 3 ceilings and actual prices?</p> <p>(d) What criteria should apply to deciding whether Cat. 3 services are accounted for above- or below-the-line?</p> <p>(e) What criteria, rules, and procedures should apply to requests for approval of bundled offerings? Should any special rules apply when the bundle includes services that are not rate-regulated by the CPUC, such as wireless services? What terms and conditions should apply when the bundle includes services that, when sold separately, have different terms and conditions (e.g., regarding early termination charges).</p> <p>(f) What criteria, rules, and procedures should apply to requests for promotional offerings?</p> <p>(g) What criteria, rules, and procedures should apply to requests for customer-specific contracts? For which types of customers should such contracts be allowed?</p> <p>Note: SBC has filed A.04-03-035 requesting authority to lower Cat. 2 prices below the floor in order to respond to competition.</p>

Phase 3B Issues		
	Issue	Reference
1.	<p>Price-Cap Index: The price cap index was suspended by D.95-12-052. Phase 3B will address whether to reinstate the price-cap index, continue the suspension of the index, or eliminate it altogether. Parties should address what criteria (e.g., the state of competition in the relevant markets) the Commission should use to determine which course of action to take. Any party that proposes a specific course of action should provide adequate information for the Commission to adopt the proposal. For example, any proposal to reinstate the price-cap index should include information about the appropriate inflation and productivity components of the index. Similarly, any proposal to eliminate the price-cap index should demonstrate that the price-cap index is unnecessary (e.g., competitive conditions warrant its elimination), and that the proposal, if adopted, would produce rates that are just and reasonable for all customers.</p>	<p>OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-4 and A-5, as further explained in the 12/27/01 ACR, pp. 7 - 9.</p>
2.	<p>LE Factor Mechanism: Phase 3B will address whether to retain the LE factor mechanism adopted in D.98-10-026, modify the mechanism, or eliminate it on a prospective basis. The Commission's focus will be on the formulation of policy regarding the regulatory treatment for "exogenous costs," and not whether any particular cost should be included or excluded in rates. Accordingly, the Commission will not consider the addition of any new LE factors or the elimination of any existing LE factors or Z-factors. Parties may address whether and how the LE factor mechanism should be revised to provide an opportunity for parties other than the utilities to propose LE factors. In addressing this matter, parties should identify who should be eligible to propose an LE factor and the procedure they would use to do so.</p>	<p>OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-5 and A-6.</p>

Phase 3B Issues		
3.	<p>Earnings Sharing Mechanism: The earnings sharing mechanism was suspended by D.98-10-026. Phase 3B will address whether to eliminate the sharing mechanism, continue the suspension of the mechanism, or reinstate sharing. Parties should address what criteria (e.g., the state of competition in the relevant markets) should be used to determine whether sharing should be eliminated, suspended, or reinstated. Any proposal to reinstate sharing should address the following: (1) the appropriate benchmark ROR; (2) the appropriate sharing formula (e.g., 50/50 sharing above the benchmark ROR); (3) the specific costs and revenues included and/or excluded from the sharing mechanism; (4) which services should have their prices adjusted to reflect sharable earnings; and (5) whether it is appropriate to have graduated sharing like that adopted in D.94-06-011. Any proposal to eliminate the sharing mechanism should describe in detail whether the relevant markets are sufficiently competitive so as to obviate the need for the sharing mechanism.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-6 and A-7.
4.	<p>Assuming the Commission reinstates an earnings-sharing mechanism: (a) Whether SFAS 106 costs recorded and reported for regulatory accounting purposes should be limited to tax-deductible contributions to external PBOP trust funds. (b) Whether any SFAS 106 costs in excess of both (1) tax-deductible contributions and (2) PBOPs funded with surplus pension assets should be carried forward and recognized as an expense in future years when tax-deductible contributions exceed SFAS 106 costs. (c) Whether the Commission should review and approve depreciation expenses. (d) Which Cat. 1 and 2 services should be included in the sharing mechanism. (e) What procedures, if any, are needed to ensure that refunds of sharable earnings are passed through to end-users, including refunds allocated to flexibly priced services and/or intermediary services such as access services and unbundled network elements.</p>	D.04-02-063, pp. 55-56, 57, 95-96, COL 92, and OP 16.

Phase 3B Issues		
5.	Gain on Sale: Phase 3B will address how gains from the sale of utility assets should be treated under NRF. Any party that recommends that ratepayers receive some or all of the gains should specify the mechanism for doing so. Phase 3B will not address the Commission's authority to allocate gains to ratepayers, since the Commission's authority to do so is well established.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-7 and A-8.
6.	Audit Findings and Recommendations: Parties may propose revisions to NRF based on the results of the SBC and Verizon audits. Any party that proposes such a revision must demonstrate a connection between the proposed revision and the results of the audits. Parties will not have an opportunity in Phase 3 to litigate issues of fact regarding the audits. All litigation of factual issues pertaining to the audits must occur in earlier phases.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-9 and A-10.
7.	Decision Findings: Parties may propose revisions to NRF based on the findings in (1) D.04-02-063 re: SBC Audit/NRF Phase 2A, and (2) D.03-10-088 re: Service Quality.	D.04-02-063, p. 151, Col 92, and OP 16; D.03-10-088, OP 11.
8.	Revisions to NRF Monitoring Reports: Phase 3B will address whether, and to what extent, the NRF monitoring reports should be revised. Any party that proposes new or revised monitoring reports should demonstrate how its proposal would enhance the Commission's ability to monitor the seven NRF goals set forth in D.89-10-031. Any party that proposes to eliminate a monitoring report should demonstrate why doing so would not detract from the Commission's ability to monitor the seven NRF goals.	OIR 01-09-001 & OII 01-09-002, Appendix A, A-10; D.04-09-061, OP 12.
9.	Deterring Utilities from Submitting Inaccurate Information: Parties may submit proposals for revising NRF in ways that would deter utilities from (a) violating the Commission's rules for affiliate transactions, (b) violating the Commission's rules re: the imputation of directory earnings, and/or (c) submitting inaccurate information to the Commission.	D.02-10-020, OP 16.

Phase 3B Issues		
10.	<p>Service Quality: Phase 3B will address whether and how NRF should be revised to achieve the Commission's goal of high-quality service. Parties may recommend revisions to NRF that are based on the record developed in Phase 2B regarding how service quality has fared under NRF. Parties may also recommend revisions that are intended to promote the availability of high quality services, such as a system of financial carrots and sticks tied to measurements of service quality. Additionally, Parties may present proposals regarding whether and how utilities should recover costs associated with the changes to NRF related to service quality. However, this proceeding will not address the recovery of a specific amount of costs.</p> <p>There will not be an opportunity in Phase 3B to litigate issues of fact regarding the quality of service provided by SBC and Verizon. All litigation of factual issues pertaining to service quality must occur in Phase 2B.</p>	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-10 and A-11, as further explained in the 12/27/01 ACR, p. 9.
11.	<p>Continuation of high Quality Service: Phase 3B will address whether specific changes to NRF are necessary to (1) improve the high quality of service provided under NRF, and (2) prevent future violations of service quality statutes, rules, and orders without making it necessary for parties to pursue lengthy formal complaint processes.</p>	D.03-10-088, pp. 7, 8, 87, 178, FOF 326, COL 7, and OP 7.
12.	<p>Reporting of Survey Data: Phase 3B will address issues concerning the reporting of survey data under the P.A. 02-03 and P.A. 02-04 filing categories. Phase 3B will focus on whether additional unreported data exists from the period under review and how SBC and Verizon should file survey data prospectively.</p>	D.03-10-088, OP 10.
13.	<p>Continued Submission of Service Quality (SQ) Monitoring Reports Specified in D.00-03-021: Phase 3B will consider ORA's proposal to require Verizon to submit the SQ monitoring reports specified in D.00-03-021 after the requirement ends in 2004.</p>	D.02-10-020, OP 2.

Phase 3B Issues		
14.	Merger Compliance Oversight Team (MCOT) Reports: Phase 3B will address whether SBC and Verizon should continue to submit the FCC MCOT reports to the Commission after the FCC requirement to submit these reports expires.	D.03-10-088, p. 165
15.	Directory Revenues: Phase 3B will address issues associated with the regulatory treatment of Yellow Page revenues under NRF.	ACR issued on December 27, 2001, pp. 4 – 5.
16.	Measurement of Excessive Directory Earnings: Whether the appropriate ROR for determining excessive directory earnings in the future should be 10.5%, 11.5%, or some other ROR.	D.02-10-020, OP 16.
17.	Whether Verizon’s earnings are Excessive.	D.02-10-020, OP 16.
18.	Outstanding PBOP Issues: Parties may address whether there are any outstanding issues from D.98-10-026 and/or Resolution T-16102 concerning SBC’s now-expired SFAS 106 Z-Factor that require resolution by the Commission.	D.04-02-063, p. 52, COL 92, OP 16.
19.	Next NRF Review: Parties may present proposals regarding (1) what guidance the Commission should provide about the issues that should be addressed in the next triennial review, and (2) the procedures that should be established to provide parties with an opportunity to offer input regarding the scope of the next triennial review.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-11.

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner and Administrative Law Judge's Ruling Inviting Comments Regarding the Scope and Schedule of Phase 3A and 3B on all parties of record in this proceeding or their attorneys of record.

Dated October 15, 2004, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.